

## United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Annual Markov NPR FINTENTS AND TRALEMARKS Washington 1 7 2 (22)

CONFIRMATION NO ATTORNEY DOCKET NO FIRST NAMED INVENTOR FILING DATE APPLICATION NO BB1252 USNA1 Karlene H. Butler 05 04 2001 09 848,841 On 21 2002 23906 EXAMINER E I DU PONT DE NEMOURS AND COMPANY LEGAL PATENT RECORDS CENTER KUBELIK, ANNE R BARLEY MILL PLAZA 25:1128 4417 LANCASTER PIKE PAPER NUMBER ART UNIT WILMINGTON, DE 19805

1638 DATE MAILED: 06 21 2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary  Examiner Art Unit Anne Kubelk  1538  - The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply  A SHORTINED STATULIORY PERIOD FOR REPLY IS SET TO EXPIRE I MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION  Services of them says a stable action the provision of 15 (15 15 3). The sheet with the correspondence address Period for Reply  A SHORTINED STATULIORY PERIOD FOR REPLY IS SET TO EXPIRE I MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Services of them says a stable action the provision of 15 (15 15 3). The sheet before the says and the stable of the sheet action of the sheet act			Application No.	Applicant(s)	
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1) Responsive to communication(s) filed on 04 May 2001.  2a) This action is FINAL. 2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C D 11, 453 O G, 213.  Disposition of Claims  4) Claim(s) 1-25 isfare pending in the application.  4a) Of the above claim(s) isfare withdrawn from consideration.  5) Claim(s) isfare allowed.  6) Claim(s) isfare rejected.  7) Claim(s) isfare objected to striction and/or election requirement.  Application Papers  9) The specification is objected to by the Examiner.  10) The drawing(s) filed on isfare allowed accepted or b) objected to by the Examiner Application Papers  9) The specification is objected to by the Examiner.  10) The proposed drawing correction filed on is a approved b) disapproved by the Examiner If approved, correction filed on is a approved by the Examiner.  11) The proposed drawing correction filed on is a approved b) disapproved by the Examiner If approved, correction filed on is a specification.  12) The oath or deciaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a) (d) or (f) a) All b) Some Colloses of the priority documents have been received in Application No in Certified copies of the priority documents have been received in Application No application from the International Bureau (PCT Rule 17 2(a)).  *See the attached detailed Office action for a ist of the certified copies not received application from the International Bureau (PCT Rule 17 2(a)).  *See the attached detailed Office action for a ist of the certified copies not received application for the foreign language provisional application has been received a policy of the provisional application has been received and the foreign language provisional application has been received and office action for a ist of the certified copies	THE N - Exten after S - If the - If NO - Failur - Any ri earne	MAILING DATE OF THIS COMMUNICATION is one of time may be available under the provisions of 37 CI SIX. 6: MONTHS from the mailing date of this communication period for reply specified above is less than thirty (30: days period for reply is specified above the maximum statutory of the to reply within the set or extended period for reply will by apply received by the Office later than three months after the	JN  R : 136 a. In no event however m  n a reply within the statutory min mum i eriod will apply and will explore SIX .6.	ay a reply be timer, fried  of thirty: 30 days will be considered timely.  MONTHS from the making date of this communication me ARANDONED 135 U.S.C. § 133	
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Application/Control Number: 09/848,841

Art Unit 1638

## Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- 1. Claims 1-17 and 24-25, drawn to a nucleic acid encoding an NPR1 protein, cells and plants comprising the nucleic acid, a method of using the nucleic acid to produce a transgenic plant, and a method of using it to alter the level of pathogen resistance in a plant, classified in class 800, subclass 279, for example.
- II. Claims 18-23, drawn to an NPR1 protein, classified in class 530, subclass 370, for example.

The inventions are distinct, each from the other because of the following reasons: Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, the different inventions have different modes of operation and different functions. The first invention is distinct from the second invention because DNA and protein differ in composition, structure and function.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, fields of search, and classification, restriction for examination purposes as indicated is proper.

Nucleotide sequences encoding different proteins are structurally distinct chemical compounds and are unrelated to one another, and different proteins are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to normally constitute **independent and distinct** inventions within the meaning of 35 U.S.C. 121.

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Absent evidence to the contrary, each such nucleotide or amino acid sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement pursuant to 35 U.S.C. 121 and 37 CFR 1.141 et seq (see MPEP 803.04 and 2434).

Upon election of a Group, Applicant is additionally required to select a single nucleotide sequence or amino acid sequence, as appropriate, for said Group. This requirement is not to be construed as a requirement for an election of species, since each nucleotide and amino acid sequence is not a member of single genus of invention, but constitutes an independent and patentably distinct invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne R. Kubelik, whose telephone number is (703) 308-5059. The examiner can normally be reached Monday through Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached at (703) 306-3218. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the patent analyst, Kimberly Davis, at (703) 305-3015.

Anne R. Kubelik, Ph.D. June 5, 2002

AMY J. NELSON, PH.D SUPERVISORY PATENT EXAMINER TECHNOLOGY CENTER 1600

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